

Public Comments

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LOG# SH/EIS-017
RECEIPT DATE: MAR. 2 9 2002

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March 22, 2002

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Bonneville Power Administration
Communications – KC-7
P.O. Box 12999
Portland, OR 97212

Re: Schultz-Hanford Area Transmission Line Project – DOE/EIS 0325
Comments on Draft Environmental Impact Statement

Dear Sir or Madam:

This law firm represents Cooke Coleman LLC and its manager and sole member, Gaylord Kellogg, the owner of certain real property referred to as the "Kellogg Family Ranch" affected by the proposed construction of a new 500-kilovolt (KV) transmission line in central Washington State (the "Proposal") by the Bonneville Power Administration ("BPA"). BPA has purported to study potential environmental impacts of the Proposal in a draft Environmental Impact Statement ("DEIS"), published in February 2002. A portion of the new transmission line has been proposed along a possible reroute of Segment A (the "Reroute"), which proposal also includes removal and reconstruction of an existing transmission line alongside the new transmission line. Both lines along the Reroute would cross approximately 6 of a mile of the Kellogg Family Ranch. This letter constitutes the formal comments of Cooke Coleman LLC and Gaylord Kellogg on the DEIS.

In the Reroute alternative for the Proposal, the BPA is proposing construction of two lines across privately-owned land, portions of which Mr. Kellogg has been exploring as to the feasibility of restoring to its natural native state, including areas directly under and adjoining the proposed Reroute. Mr. Kellogg's stewardship of the entirety of the Kellogg Family Ranch is placed in jeopardy as a result of the Reroute. In preparing the DEIS, BPA did not consult with or even give prior notice of the Reroute to Mr. Kellogg. Further, BPA erroneously assumed – without analysis – in the DEIS that impacts resulting from construction of two new lines along a longer, circuitous route (including removal of the existing line along the current straight route) would be the same as impacts resulting from only a single line along a shorter route next to the existing line. As detailed below, we urge BPA to address the procedural and substantive deficiencies that

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have occurred in preparing the DEIS, including but not limited to, preparation of a draft supplemental environmental impact statement analyzing the Reroute alternative.

A. The Scoping Process for the DEIS Was Deficient:

1. No Notice of Reroute Alternative Prior to Publication of DEIS:

This 45-day public comment period is the first opportunity Mr. Kellogg has had to review and submit comments on the Reroute alternative which calls for construction of two transmission lines traversing the Kellogg Family Ranch. See Attachments 1-5. The Reroute was not indicated on any of the four scoping notices issued by BPA, beginning in December 2000. See Appendix A of the DEIS. In fact, although BPA has been conducting planning for the Proposal for more than a year, there has been no public notice or opportunity to comment regarding the Reroute alternative until publication of the DEIS last month. Mr. Kellogg first learned of the Reroute on February 7, 2002 – the day before the DEIS was published – and did not receive any visual indication of the Reroute until February 11, 2002. See Attachment 8. Only at that point did Mr. Kellogg learn of the possible Reroute, which will directly and substantially impact the Kellogg Family Ranch. Documents received from the BPA pursuant to a recent FOIA request indicate that plans for the Reroute were being developed as early as October 2001. See Attachment 15.

The last-minute inclusion of the Reroute in the DEIS process was not preceded by any public notice or opportunity for public involvement, contrary to NEPA procedural requirements. In fact, one of BPA's own public brochures, entitled "A Handy Guide to Meeting Bonneville's Environmental Requirements Before the Funding of Your Project," states the following on page 5:

Public involvement is an important Bonneville commitment, both to the citizens of the Pacific Northwest and to the provisions of NEPA. **It's also common sense; if you take an action that affects people, and you don't talk with them first to see what they think, you are more likely to get resistance and anger.** Bonneville's main concern is that the "interested or affected public" be notified and allowed to comment on specific projects before Bonneville makes a final decision to fund them.

Attachment 20 (emphasis added). The DEIS states on pages 1-3 through 1-4:

Scoping refers to a time early in a project when the public has an opportunity to express which issues and concerns should be considered in an EIS. On November 9, 2000, BPA published a Notice of Intent to prepare an EIS and conduct public scoping meetings for the proposed project. A letter was sent to the public on December 12, 2000, explaining the proposal, the environmental process, and how to participate. A comment sheet was included to enable individuals to mail comments back to BPA. An e-mail address was also given to enable people to

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comment by e-mail. Project scoping meetings were held in Desert Aire, Yakima, and Ellensburg, Washington. Written and verbal comments were collected during scoping.

A second project mailing went to the public on March 26, 2001. This letter updated interested parties on the progress of the project and the information gathered during the scoping process. Many issues were raised during the scoping process, and most of the comments received focused on the following issues:

- Potential environmental impacts, including impacts to residential land and property values;
- The proposed alternatives and how the line would be designed;
- Agricultural land impacts; and
- The need for the project, and the agencies that BPA should coordinate with during the process.

On June 6, 2001, a third letter was mailed to landowners along a new route located in the Saddle Mountain area east of Vantage. Members of the public who attended the scoping meetings proposed a route in this general area. BPA personnel took a closer look and developed a route, which is discussed in the next chapter.

A fourth letter was mailed on July 30, 2001. This letter identified BPA's Preferred Alternative and the reasoning behind the choice.

Notwithstanding the fact that the Reroute will run across the Kellogg Family Ranch, BPA did not consult with or even give prior notice of the Reroute to Mr. Kellogg. Unlike the landowners along the "new route" located in the Saddle Mountain area referenced above, BPA never sent out a letter to Cooke Coleman LLC or Mr. Kellogg inviting comment on the Reroute. The July 30, 2001 letter describing the Preferred Alternative is also silent regarding the Reroute.

2. NEPA Provides for Public Participation During Scoping.

Public participation is a hallmark of NEPA and a vital element in accomplishing the statute's disclosure purposes. E.g., 40 C.F.R. § 1500.1(b) (stating that public scrutiny is essential to

¹ Even after publication of the DEIS, BPA made it difficult to provide public comment. BPA's website indicated that public meetings would be held regarding the DEIS, but failed to indicate a precise location for the first meeting, held on February 26, 2002; no address for the Hal Holmes Community Center in Ellensburg was provided. See Attachment 7.

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implementing NEPA); 40 C.F.R. § 1500.2 (requiring agencies to the fullest extent possible to implement procedures to make the NEPA process more useful to decision makers and the public, and to encourage and facilitate public involvement in decisions which affect the quality of the human environment); see *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (holding that one of the twin aims of NEPA is active public involvement and access to information); *Troat Unlimited v. Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974) (holding that NEPA requires provision of information of the proposed project's environmental impact and encouragement of public participation in the development of that information). The lead agency is required to make "diligent efforts to involve the public in preparing and implementing their NEPA procedures." 40 C.F.R. § 1506.6. Such public participation is provided through the scoping process and through the ability to provide comments on the environmental impact statement.

Prior to preparation of a DEIS, the lead agency must consult with and obtain comments from the public and other federal agencies. 42 U.S.C. § 4332(2)(c). The scoping process is detailed in 40 C.F.R. § 1501.7, and is intended to provide an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." In this process, the lead agency is required to invite the participation of affected persons and to hold scoping meetings where the impacts of a particular action are confined to specific sites. 40 C.F.R. § 1501.7(a), (b). The scoping process is vitally important because, as set forth in 40 C.F.R. § 1502.9(b), draft environmental impact statements "shall be prepared in accordance with the scope decided upon in the scoping process."

The scoping process is particularly critical here because BPA's decision on the Proposal is not subject to formal adjudications under the Administrative Procedures Act ("APA"), and thus is not subject to APA procedures for public notice, comment and hearings. See 5 U.S.C. § § 551-706 (1994); see also 16 U.S.C. § § 832, et seq. Given the significant impact of the Proposal on individual property interests, due process requires that Cooke Coleman LLC and Gaylord Kellogg be provided a sufficient opportunity to review and comment on the Reroute. See *Northwest Environmental Defense Ctr. v. Bonneville Power Administration*, 117 F.3d 1520, 1534-35 (9th Cir. 1997); *Price Road Neighborhood Ass'n v. United States Department of Transportation*, 113 F.3d 1505, 1511 (9th Cir. 1997).

3. Cooke Coleman LLC and Gaylord Kellogg Were Denied the Opportunity to Comment on the Reroute During the Scoping Process and Have a Limited Ability to Prepare Sufficient Comments During the Short DEIS Comment Period.

The critical opportunity for the property owner most affected by the Reroute to provide public comment was lost due to the fact that the scoping process did not include the Reroute alternative as part of the Proposal. BPA did not include the Reroute in any scoping notice and did not discuss the Reroute at any public scoping meeting. Appendix A to DEIS. No person or agency

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has been given the opportunity to review or comment on the Reroute until publication of the DEIS. Cooke Coleman LLC and Gaylord Kellogg have been denied a significant chance under the National Environmental Policy Act to analyze and provide meaningful comment on the possible Reroute.

Since publication of the DEIS last month and discovery of the fact that two transmission lines may be constructed across the Kellogg Family Ranch, Mr. Kellogg has attempted to gather information regarding potential environmental impacts on his property and obtain public information from the BPA pursuant to the Freedom of Information Act on short notice. See Attachments 9, 11, 14, and 16. However, BPA has been unable to respond to most of the FOIA requests prior to the close of the brief 45-day comment period on the DEIS. Although Mr. Kellogg has requested an extension of the public comment period, which BPA has authority to grant pursuant to 40 C.F.R. § 1506.10(d), BPA has denied such a request on the basis of "BPA's urgent need to meet the project energization date." See Attachment 13. Further, BPA has promised responses to many of the FOIA requests on March 29, 2002 – four days after the close of the public comment period. See Attachment 15. Therefore, Cooke Coleman LLC and Gaylord Kellogg are significantly hampered in their ability to provide complete public comment on the DEIS, because they do not yet have access to information on which the decision to include the Reroute alternative was based.

B. A Draft Supplemental Environmental Impact Statement is Warranted.²

The recent inclusion of the Reroute alternative in the DEIS comprises a "substantial change" in the Proposal which was not previously contemplated, and raises "significant new circumstances or information relevant to environmental concerns," thereby requiring preparation of a draft supplemental environmental impact statement pursuant to 40 C.F.R. § 1502.9(c)(1). Because the Reroute was included at a late stage of environmental review of the Proposal and was not preceded by proper scoping, the DEIS does not comply with 40 C.F.R. § 1502.9(a), which requires draft environmental impact statements to be "prepared in accordance with the scope decided upon in the scoping process."

Until preparation of a draft supplemental environmental impact statement for the Proposal, impacts of the Reroute alternative will remain unexamined and meaningful public comment on the Reroute will be precluded. See, e.g., *Kentle Range Conservation Group v. United States Forest Service*, 148 F. Supp.2d 1107, 1138-41 (E.D. Wash. 2001) (ruling that supplemental environmental impact statement was warranted in part due to changes to maps of certain units); see also *Dubois v. United States Department of Agriculture*, 102 F.3d 1273, 1292 (1st Cir. 1996), cert. denied, 117 S. Ct. 2510 (1997) (holding that a new alternative in an environmental impact

² BPA has been separately requested to prepare a draft supplemental environmental impact statement to analyze environmental impacts of the Reroute in a March 11, 2002 letter sent on behalf of Cooke Coleman LLC and Gaylord Kellogg. At the time of drafting these formal comments, BPA has not responded to such request.

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statement was "not merely a reduced version of a previously considered alternative," but a different configuration of activities and locations, and thus had to be exposed to adequate public comment). Inclusion of an alternative that has not been studied renders an environmental impact statement inadequate as a matter of law. See *Alaska Wilderness Recreation and Tourism Act v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995); *Resources, Ltd. Inc. v. Robertson*, 35 F.3d 1300, 1305 (9th Cir. 1994).

Here, the DEIS does not contain any meaningful analysis of potential environmental impacts of the Reroute, which is planned to cross approximately .6 of a mile of the Kellogg Family Ranch. Analysis in the DEIS is almost exclusively limited to those impacts that might result from construction of Segment A as originally contemplated along a route which crosses Indian allotment land, running next to existing BPA transmission lines. In the limited instances in which the Reroute is mentioned in the DEIS, a summary statement—without analysis or citation—erroneously concludes that impacts along the Reroute would not be any different in degree or kind than impacts along the original route. Examples of this conclusory treatment of Reroute impacts are detailed in Section C, below.

No environmental studies have been performed along the portion of the Reroute which crosses the Kellogg Family Ranch. There is thus no basis for BPA to conclude that impacts along the Reroute would be the same as impacts along the Reroute. Moreover, the assertion that the degree of impacts resulting from the Reroute alternative would not be different in kind than those from construction of Segment A, along the original route ignores the important fact that the Reroute is more than a quarter mile longer and involves construction of a new transmission line, and removal and re-construction of the existing BPA transmission line. The full extent of environmental impacts associated with such contemplated action should be analyzed in a draft supplemental environmental impact statement.

C. Impacts to the Kellogg Family Ranch Have Not Been Adequately Studied.

NEPA requires an agency to take a "hard look" at the environmental consequences of its actions. E.g., *Metcalf v. Dufay*, 214 F.3d 1135, 1141 (9th Cir. 2000). An environmental impact statement is required to provide "full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." *Greenpeace v. National Marine Fisheries Service*, 55 F. Supp.2d 1248, 1269-70 (W.D. Wash. 1999). Analysis of alternatives should provide a clear basis for choice among options by the decisionmaker and the public. *Id.* The form, content and preparation of an environmental impact statement must foster both informed decision-making and informed public participation. *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.2d 1372, 1376 (9th Cir. 1998). An agency may not select a particular alternative for action unless such alternative is adequately discussed and evaluated in an environmental impact statement. 40 C.F.R. § 1505.5(e).

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Courts are required to strictly interpret the procedural requirements in NEPA and supporting regulations "to the fullest extent possible." *Lohan v. Brinsgar*, 506 F.2d 677, 687 (9th Cir. 1974). "Crucially, pro forma compliance will not do." *Id.* at 693. General statements about "possible" effects and "some risk" do not constitute a "hard look," required under NEPA absent justification regarding why more definitive information could not be provided. *Neighbors of Cuddy Mountain*, 137 F.2d at 1380.

Here, potential environmental impacts of the Reroute alternative have not been considered to the extent required under NEPA, if at all. Impacts to the Kellogg Family Ranch and other properties over which the Reroute is proposed to cross have been summarily assumed to be the same as impacts that would occur along the shorter, straight route next to the original transmission lines. Significant portions of the DEIS do not even mention the Reroute or factor in its longer, more circuitous route. Discussion of the impacts resulting from removal of the existing transmission line along the current route is entirely absent from the DEIS. The DEIS does not even contain a sufficient description of where the Reroute will be located, which is confusing and misleading to any person or agency desiring to provide comment on the Proposal. Each of these deficiencies is discussed in the following sections.

1. Description of Reroute is Unclear and Inaccurate.

The Reroute is described in a single paragraph on page 2-2 of the DEIS, at the end of the section over-viewing Segment A, as follows:

There is a small potential reroute within Segment A, referred to on Map 2. Alternatives, and shown in detail on Map 3, *Reroute in Segment A*. The existing Schultz-Vantage line and the new transmission line would be rerouted to the south of the existing alignment. They would run parallel to each other at a separation of about 300 feet. **A little over a mile in length, the reroute would start about a half-mile south of Coleman Road.** The lines would be rerouted to the south and then the east, joining the existing alignment just west of Colockum Road.

(emphasis added). This description is not clear as to the precise location of the Reroute. In fact, the description quoted above does not even match Map 3 in the DEIS, which is intended to illustrate the Reroute. These errors seriously impede the efforts of any interested person or agency reviewing the DEIS and wishing to make comment on the Proposal.

The errors further raise the question that, if the BPA is not even clear as to where the Reroute would be located, how can it be satisfied that impacts of the Reroute would be the same as those along the original route? Moreover, one may conclude that the inaccurate description of the Reroute indicates its last-minute inclusion in the DEIS, which left BPA insufficient time to accurately describe the Reroute prior to DEIS publication, much less analyze its impacts.

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2. The Reroute is Not Factored Into Distance Calculations of Segment A.

The DEIS consistently misrepresents Segment A as 29.4 miles long. E.g., DEIS pages S-3¹, 2-2, 3-56. This calculation fails to take into consideration the fact that the Reroute would add approximately 29 of a mile to the length of Segment A. This fact is not reflected in any charts supporting analysis in the DEIS. See, e.g., Tables 2.2-1 and 2.2-2, at page 2-7 of the DEIS (reflecting estimates of access road development and access road disturbance for the preferred alternative, which estimates do not include or reference the Reroute), Table 3.7-2 (stating distance and percentage of privately and publicly administered lands in project area, not including Reroute), Table 3.7-3 and Table 3.7-4 (stating distance of land uses crossed by project area, not including Reroute), pages 3-56 through 3-57 (stating percentages of Segment A which cross privately owned and publicly administered lands, not including Reroute figures).² In fact, Table 2.8-1, Summary of Impacts, at pages 2-21 through 2-30 of the DEIS does not contain any reference to or analysis of the Reroute.

NEPA obligates agencies such as BPA to make accurate, relevant environmental information available for review before decisions are made and before actions are taken. 40 C.F.R. § 1500.1(b). Internal inconsistencies in an environmental impact statement, as are present here in BPA's DEIS, may render the statement legally deficient. See *National Audubon Society v. Butler*, 160 F. Supp.2d 1180 (W.D. Wash. 2001).

3. Construction Impacts Resulting from Removal and Reconstruction of the Existing Line Are Not Analyzed.

Entirely absent from the discussion of environmental impacts in the DEIS is consideration of the fact that the Reroute alternative will involve both the construction of a new transmission line along a wholly different, longer route than originally contemplated for Segment A, and removal and reconstruction of an existing transmission line next to the new transmission line, which existing line currently runs along a relatively straight route through Indian allotment land. For

¹ It should be noted that the 15-page Summary at the beginning of the DEIS does not contain a single mention of the Reroute. Not only does this section misrepresent Segment A as being 29.4 miles long (page S-3), but the Summary contains many other inaccuracies concerning the cost of the preferred alternative (page S-5), the size and amount of right-of-way needed, amount of clearing, location and number of access roads (page S-6), and discussions of impacts of the preferred alternative on floodplains and wetlands, vegetation, wildlife, fish resources, land use impacts, socioeconomic, visual resources, recreation resources, cultural resources and public health and safety – each of which would be more greatly and/or differently affected by the construction of the Reroute alternative involving two transmission lines and removal of the existing line, than the original proposal to build a single line along the relatively straight current transmission line route. An interested person reviewing the DEIS Summary would not even have notice of the fact that the Proposal now includes the Reroute alternative.

² Similar charts prepared for the analysis on each of the proposed alternatives also do not include the actual length of Segment A including the Reroute. E.g., Tables 2.3-1 and 2.3-2, Tables 2.4-1 and 2.4-2, Tables 2.5-1 and 2.5-2.

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this reason, analysis of construction-related impacts in the DEIS are significantly underestimated and not fully considered.

Without question, impacts will occur during construction of the two lines proposed for the Reroute, as well as during the removal of the existing transmission line proposed to be replaced along the new route. The DEIS discusses some potential impacts of construction of one new line, but fails to include the extensive additional construction activities associated with the Reroute in any analysis.

As an initial matter, Section 2.2.2 of the DEIS, at page 2-5, states that a new right-of-way would be needed for the new structures and line, at a width of 150 feet. But, there is no discussion of how wide the right-of-way would need to be along the Reroute, since the Reroute proposal envisions construction of two lines (the new line and reconstruction of the existing line). Documents provided by the BPA in response to recent FOIA requests indicate that the new right-of-way for the Reroute would be 350 feet (more than twice as wide as required for the original route), but this fact is not indicated anywhere in the DEIS. See Attachment 15. These documents further reflect the fact that the area of disturbance will change as a result of the Reroute by replacing and removing towers on the existing line. *Id.* Again, this analysis did not make it into the DEIS.

Section 2.2.3 regarding clearing and Section 2.2.4 regarding access roads on pages 2-6 through 2-7 of the DEIS (plus supporting Tables 2.2-1 and 2.2-2) also do not contain complete or accurate information because the Reroute is omitted from this analysis. Therefore, an interested person wishing to make public comment cannot determine how wide the right-of-way of the Reroute will be, how much new construction is required, how many new roads will be constructed, or how much land will be cleared for the Reroute.

Section 4.1.2 of the DEIS, at pages 4-4 through 4-6, details many of the construction impacts on soils and geology that would result from access road construction and improvements, maintenance activities, right-of-way clearing and site preparation for structures and other facilities.⁵ Even though it is acknowledged that "New crossings would disturb the soil surface; increase erosion, runoff and sedimentation in nearby watercourses; impair soil productivity and remove land from production," (DEIS at page 4-4), the DEIS does not provide any detail regarding a comparison of construction impacts between the original Segment A and the more intensive work required to construct the Reroute.

⁵ Appendix B to the DEIS, *Planning, Construction and Maintenance Activities*, also does not mention the proposed Reroute in its extensive discussion of right-of-way acquisition and preparation, access road system, construction of structures, and site restoration and clean-up.

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Section 4.3.1 of the DEIS, at pages 4-22 through 4-25, details significant impacts to vegetation from construction-related activities, which in turn leads to increase in water temperature and water velocity and decreases wildlife habitat and further results in erosion of stream banks and deposition of sedimentation into waterways. DEIS, page 4-23. Of particular concern is the fact that construction and replacement of support structures requires removal of large areas of vegetation and use of heavy machinery to compact soils. DEIS, page 4-24. These activities can result in decrease of slope stability and degradation of plant habitat. DEIS, pages 4-24 through 4-25. However, the DEIS does not mention the significantly greater scope of construction activities associated with the Reroute alternative, compared with the original Segment A.

Similarly, pages 4-37 through 4-38 of the DEIS discuss construction impacts on wildlife. The DEIS notes that a wide variety of species including deer, elk, wintering bald eagles, nesting raptors, waterfowl and small rodents will be disturbed by construction, and some species may abandon their nests entirely if the disturbance is severe. Although construction associated with the Reroute will disturb more than twice as much area (removal of existing line and construction of two lines instead of one) as the original Segment A proposal, the DEIS does not discuss these differences or their impact on the surrounding area.

Section 4.5.2 of the DEIS, at pages 4-52 through 4-56, considers the construction, operation and maintenance impacts on fish resources resulting from the Project. A long list of serious impacts includes damage to fish or fish habitat from construction sediments in streams, soil from roads, cleared areas, excavations, stockpiles or other construction sources may increase sediment load or deposition in spawning gravels, concrete washing or dumping might enter streams, other construction materials (metal parts, insulators, wire ends, etc.) might enter streams, mechanical disturbance of fish habitat from equipment operating in or crossing streams, streambank compaction or sloughing - reducing ability to support vegetation, substrate disturbance, vibration or shock from operating equipment, hazardous materials spills, including petroleum products and hydraulic oil, and impacts resulting from clearing of land for structure construction and access roads. Again, the DEIS fails to mention the additional construction activities and their impacts that would result from the Reroute.

It is unclear if Table 4.6-1 on page 4-67 of the DEIS accurately describes structure and access road impacts, although it appears not to include the Reroute in its data. However, there is clearly no discussion of the Reroute in Section 4.6.2 on page 4-67 through 4-68 regarding land use impacts common to construction alternatives. Nor is there any mention of the Reroute in Section 4.8.2 on page 4-88 of the DEIS regarding visual impacts common to construction alternatives, or in Section 4.9.2 on page 4-96 of the DEIS regarding recreation impacts common to construction alternatives. Given the probability that the Reroute alternative will take more time to construct (because the new route is longer and more circuitous than the existing route and because the existing transmission lines are planned to be removed and reconstructed along the new route), affected properties and resources are likely to be affected to a greater and different degree than if

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the new line is constructed along the existing route. Such impacts should have been analyzed in the DEIS.

The intensive construction activities associated with the Reroute alternative also are not analyzed in Section 4.10.2 on pages 4-100 through 4-102 of the DEIS pertaining to cultural resources impacts. The DEIS cautions that "Any ground-disturbing activity within the boundaries of a significant cultural resource would be destructive, resulting in the permanent, irreversible, and irretrievable loss of scientific information and/or cultural value." DEIS, at page 4-100. Further, even non-ground-disturbing activities such as cutting vegetation and road easements may have negative impacts on cultural resources. *Id.* The DEIS discusses the fact that grading and backfilling, use of heavy equipment, construction of support structures and access road repair, improvement and construction could significantly impact cultural resources and may even lead to "permanent, irreversible damage." *Id.* Inexplicably, the DEIS lacks any discussion of the construction activities required to remove the existing transmission line located on Indian allotment land. Nor does the DEIS acknowledge that a significantly wider area would be required to be cleared and disturbed for construction of two lines (not just the single proposed new line) along the new Reroute.

Map 11 of the DEIS indicates that the area of the potential Reroute (even though the Reroute itself is not shown on the map) includes one of the most significant cultural resource areas affected by the Proposal. The Kellogg Family Ranch and other properties along the Reroute were historically used by Native Americans for traditional gathering areas and bear evidence of early settlers' historic home sites. As Section 4.3.4 on page 20 of Appendix H to the DEIS cautions, "Traditional gathering areas may be affected by construction, or by the introduction of non-native vegetation. A camas gathering area, for example, may be ruined by the introduction of invasive non-native plants." No studies have been conducted to determine the impact on traditional cultural properties ("TCP") located on the Kellogg Family Ranch, however. Instead, the DEIS and Appendix H defer further study and analysis of potential impacts to cultural resources to a later date. Of course, without such study included as part of the DEIS, interested persons are unable to review and comment on the conclusions reached regarding cultural resources impacts during this short 45-day comment period.

The failure of the DEIS to include any discussion regarding the substantial work that would have to occur along the existing route to remove existing lines, and along the potential Reroute to construct two separate lines can only be explained by the rushed nature of the BPA's recent inclusion of the Reroute alternative as part of the Proposal. These deficiencies, along with other procedural errors committed by the BPA as set forth in this letter, warrant preparation of a draft supplemental environmental impact statement studying the Reroute and its potential impacts.

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4. Vegetation Impacts of the Reroute Are Not Adequately Analyzed.

Vegetation impacts of the Proposal are discussed at pages 3-17 through 3-19 of the DEIS, but the only mention of the Reroute is a summary conclusion that the Reroute "would reduce impacts to forested lands and grasslands and increase the impacts to shrublands compared to Segment A." The DEIS concludes on page 4-27 that the Reroute would result in less of an impact to riparian vegetation than the original alignment and that more shrub-steppe area would be disturbed along the longer Reroute area.⁶ Appendix E of the DEIS contains a 20-page study of plants potentially affected by the Proposal and a single sentence regarding the Reroute on page 4, as follows: "The Segment A reroute crosses an area of shrub-steppes similar to the original alignment, but crosses Cooke Canyon Creek in an area without significant riparian vegetation below the original alignment."⁷ In reality, however, BPA documents disclosed in response to a FOIA request indicate that "there may be scattered cottonwoods in the reroute."

These statements published in the DEIS and Appendix E are not based on actual study and further are potentially misleading because they fail to disclose the fact that shrub-steppe vegetation (generally characterized by big sagebrush and bluebunch wheatgrass) is the natural, dominant plant species for this area. See Appendix E of the DEIS at page 2. As a result, an increase in impacts to shrublands – as is expected to result from the Reroute – would threaten the natural plant community that is expected to occur without disturbance or alteration of habitat. *Id.* In fact, page 4-23 of the DEIS notes that "shrub-steppe plant communities are slow to recover from disturbance." Photographs illustrating BPA's current survey and tower maintenance practices and their detrimental impact to vegetation and streams may provide some prediction of the negative impacts to be suffered on the Kellogg Family Ranch with approval of the Reroute alternative. See Attachments 29, 30 and 31.

The value of natural vegetative habitat is revealed in part on page 4 of Appendix E, which mentions that one area of Segment A covered by big sagebrush/bluebunch wheatgrass (i.e. shrub-steppe vegetation) is sufficiently pristine to qualify as a Washington National Heritage Program ("WNHP") high quality plant association. This study also notes that several intermittent creeks along Segment A support channel vegetation consisting of ocean-spray, rose, hawthorn and sagebrush, with an understory of cheatgrass, yarrow, chicory and other species.

There is no discussion in the DEIS or Appendix E evidencing any actual study of vegetation located on the Kellogg Family Ranch, or any other portion of the Reroute. Nor is there any detailed description of the types of vegetation found along the Reroute. Table 3.4-1 and 3.4-2

⁶ As noted above in Section C.3 of this letter, there is no discussion regarding impacts to vegetation resulting from removal of the existing line and construction of two lines along the Reroute.

⁷ With the exception of Map 3, the DEIS consistently and erroneously refers to Cooke Creek as Cooke Canyon Creek.

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regarding vegetation cover types by segment and by alternative, on page 3-18 of the DEIS, do not appear to even include data regarding the Reroute (see also Table 1 in Appendix E).

Further, the DEIS and Appendix E both refer to plant surveys that were conducted in August 2001 – before the Reroute alternative was included as part of the Project. Therefore, there has been no study to determine if any federal listed and candidate rare plant species exist in the Reroute area. This is particularly unsettling given the fact that Appendix E at page 12 notes that “Potential Ute ladies’ tresses habitat may occur in the wetland areas adjacent to Cooke Canyon Creek along Segment A.” Other known occurrences of rare plant species occurring along Segment A include Hoover’s *nauschia* (threatened), Puqper milk-witch (sensitive), Beaked *cryptantha* (sensitive), Longsepal globemallow (sensitive), and Sukadorf’s monkey flower (sensitive). See Table 7, page 15-16, Appendix E; see also pages 3-26 through 3-30 of the DEIS.

It is possible that the Kellogg Family Ranch includes or could support prairie shrub-steppe vegetation to qualify as a WNHQ high quality plant association. It is also possible that rare plant species exist on the Kellogg Family Ranch or other portions of the Reroute. However, BPA has not completed any study of these affected areas to determine the true extent and nature of impacts to vegetation as a result of the Reroute. Given all these omissions, NEPA requires that actual study of vegetation impacts resulting from the Reroute be completed in a draft supplemental environmental impact statement.

5. Wildlife Impacts of the Reroute Are Not Adequately Analyzed.

Potential wildlife impacts along the Reroute (other than fish impacts, discussed below in Section C.6 of this letter) are summarily mentioned in only two locations of the DEIS. First, page 3-32 states without support that “Species present along the proposed reroute are expected to be similar to those discussed for the original Segment A alignment.” This is followed by a single sentence on page 4-40 of the EIS, boldly stating: “The Segment A reroute would have the same impacts to wildlife species as the original alignment discussed above.” Appendix F to the DEIS includes a 68-page Fish and Wildlife Technical Report, dated January 8, 2002, plus two addenda, all of which do not contain any mention or analysis of the Reroute alternative.

Page 32 of the Fish and Wildlife Report in Appendix F notes that approximately 150 wildlife species (birds, mammals, reptiles and amphibians) are known to use the shrub-steppe habitat type for some part of their lifecycle. Removal of significant areas of shrub-steppe is contemplated along the Reroute, and thus likely will impact a number of species (some of them threatened or endangered) currently living on or near the Kellogg Family Ranch, including but not limited to great horned owls, red tail hawks, mule deer, bold eagles, Quilomene elk, pygmy rabbit, sharp tailed grouse and sage grouse. The extent and nature of such impacts cannot be determined absent actual study of the Reroute area.

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The DEIS admits in a separate section, page 4-27 regarding vegetation impacts, that more shrub-steppe area would be disturbed along the longer Reroute area than along the original route (not to mention the wider right-of-way area required for construction of both the new line and re-construction of the existing transmission line which will be removed from the current straight route). However, it erroneously assumes that the Reroute would result in less of an impact to riparian vegetation than the original alignment. DEIS, page 4-27. A review of the definition of riparian vegetation on page 9-12 of the DEIS glossary indicates that “riparian vegetation” includes “vegetated areas surrounding streams, rivers, lakes or wetlands.” Thus, removal of any type of vegetation surrounding stream channels along the Reroute – including shrub-steppe – would result in impact to riparian vegetation, contrary to the statements in the DEIS.

Serious questions are raised regarding the propriety of the assumption – without any supporting analysis in the DEIS – that impacts to wildlife resulting from the Reroute proposal would not differ from impacts along the original shorter Segment A route. BPA should prepare a draft supplemental environmental impact statement analyzing wildlife impacts resulting from the Reroute alternative, based on actual studies of the affected areas.

6. Fish Resources Impacts Are Not Adequately Analyzed.

No actual study of potential impacts to fish resources resulting from the Reroute alternative preceded publication of the DEIS. Map 6 in the DEIS purports to illustrate fisheries impacts, but the map does not even show the Reroute location. Appendix F to the DEIS, the Fish and Wildlife Technical Report published in January 2002, contains more than 26 pages studying fish impacts of the Proposal, but does not mention the Reroute at all.

Considering the significant measures the state and federal government have employed to protect fish resources, including recent listing of threatened and endangered species, a reasonable person would expect more than the summary conclusion on page 4-56 of the DEIS.

The proposed reroute of part of Segment A would move the crossing of Cooke Canyon Creek south by approximately 3 mile to an area with much less riparian vegetation and multiple channels. Less riparian vegetation would have to be removed in this area; therefore impacts to fish would be less than the original alignment.

Again, as discussed in Section C.5 of this letter, riparian vegetation includes shrub-steppe and other vegetation located on the banks of the multiple braided channels of Cooke Creek, over which the Reroute would cross. As a result, the conclusion is patently wrong. The conclusion also ignores the substantial and serious construction-related impacts that will likely occur during the construction of two lines instead of the one line analyzed for the original route, and the removal of the existing line, undoubtedly resulting in much greater impacts to the affected area. See Section C.3, above.

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If the BPA had consulted with the property owner of the Kellogg Family Ranch and conducted proper scoping with respect to the Reroute proposal, BPA would have learned that Mr. Kellogg is working to restore portions of the property to its natural, native state. Restoration of natural vegetation along Cooke Creek and nearby Coleman Creek would, in turn, bring back the habitat enjoyed in this area for many years by a variety of anadromous fish species. Moreover, actual study of the area affected by the Reroute might show the existence of indigenous red banded rainbow, bull trout (federal threatened species) and west slope cutthroat in Cooke Creek.

A draft supplemental environmental impact statement is required under NEPA, so that study of potential fish resources impacts of the Reroute, taking into consideration the wider right-of-way required for installation of the new line and re-constructed original line, removal of the original line, and significantly larger scope of construction-related impacts is completed prior to BPA's decision on the Proposal.

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7. Floodplains and Wetlands Impacts of the Reroute Are Not Adequately Analyzed.

The discussion of floodplains and wetlands at pages 3-6 through 3-9 of the DEIS fails to mention the Reroute in its discussion of Segment A. It is unclear whether or not the statement that there will only be 22 crossings of intermittent streams in Segment A includes the number of stream crossings expected along the Reroute. However, neither Map 4 (water resources) or Map 5 (wetlands/plains locations) in the DEIS includes a depiction of the Reroute, thereby making it difficult to provide public comment on the maps' accuracy.

The DEIS also mentions that an "unavoidable direct impact to wetlands would result from building access roads." DEIS, page 4-12. But there is no information regarding the number or location of access roads required for the Reroute and thus no analysis of actual impacts to wetlands that might occur.

Site-specific studies of the Kellogg Family Ranch, which were not conducted by the BPA in preparing the DEIS, indicate that the Reroute is proposed to run through a larger braided area of the Cooke Creek alluvial fan than the original route, requiring the crossing of numerous additional stream channels. Experts consulted by Cooke Coleman LLC and Gaylord Kellogg opine that each channel historically supported a variety of native vegetation, which would be threatened by construction and maintenance activities of the BPA along the Reroute. Mr. Kellogg has begun to take steps toward restoring portions of the Kellogg Family Ranch to a natural state, as it existed prior to widespread cattle grazing. Recognizing that the clearing and other construction activities associated with the Proposal require extensive removal of shrub-steppe and other natural growth, restoration efforts at the Kellogg Family Ranch would be seriously hampered if the Reroute alternative is constructed.

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Without any actual study of the Reroute, or any prior notice to Cooke Coleman LLC and Gaylord Kellogg so that there would be an opportunity for the property owner to comment on the Reroute, the BPA concludes on page 4-13 of the DEIS:

The reroute in Segment A would result in the same impacts as shown in Table 4.2-1, Segment A, Impacts to NW1 Mapped Wetlands. Cooke Canyon Creek would be crossed further to the south, resulting in a moderate impact.

Not only is the location of the Reroute distinct from the location of the original Segment A, resulting in different types of impacts, but the degree and extent of impacts also will be greater if the Reroute alternative is selected. As noted above, the Reroute includes the construction of two lines instead of the one line analyzed for the original route, as well as removal of the existing line, undoubtedly resulting in a far greater impact to the affected area. Because the nature and extent of floodplains and wetlands impacts that would result from the Reroute are not examined in the DEIS, its analysis is deficient.

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8. Land Use Impacts of the Reroute Are Not Adequately Analyzed.

The DEIS does not include the Reroute in any of its discussion of land use impacts at pages 3-51 through 3-57, or supporting tables and maps (Table 3.7-2, Table 3.7-3, and Table 3.7-4; and Map 7 and Map 9). Curiously then, the DEIS concludes at page 4-71:

The proposed Segment A reroute of approximately 1.3 miles would cross 1.2 miles of private land and 0.1 miles of BLM land. Impacts to these land uses would be the same as those impacts described along the original Segment A alignment.

Notwithstanding the lack of analysis or study to support this conclusion, it is clearly wrong. The Reroute is more than a quarter mile longer than the original alignment. It will cross more privately-owned land than the original route, including approximately .6 of a mile across the Kellogg Family Ranch. It will require a wider right-of-way to accommodate construction of both the new line and re-construction of the existing line. And, it will require removal of the existing line along the original route. None of these factors have been taken into consideration in the conclusion of the DEIS.

Impacts on the property value of the Kellogg Family Ranch also have not been studied or considered. Pages 4-84 through 4-85 of the DEIS summarily state that "The new line is not expected to cause overall long-term adverse effects on property values." There is no mention of the Reroute in this section, or the right-of-way that is more than twice the size of the original right-of-way for the new line, required for construction of two lines. Actual study of the potential impact of the property value of the Kellogg Family Ranch would likely show a clear decrease in property value with two transmission lines crossing approximately .6 of a mile of the property fronting on two county roads: Cooke Canyon Road and Grage Road.

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The potentially devastating effect of the Reroute on Mr. Kellogg's restorative plans for portions of the Kellogg Family Ranch have been previously noted in this comment letter. BPA did not consult with Cooke Coleman LLC or Mr. Kellogg before deciding to include a Proposal over the Kellogg Family Ranch of this magnitude. Not only is the Ranch threatened by the Reroute proposal, but impacts on the current use of the property have not been studied. None of the following potential impacts have been studied with respect to the Kellogg Family Ranch or other properties along the Reroute: (1) noise and vibration impacts from construction and maintenance of two transmission lines; (2) noise impacts from operation of two transmission lines; (3) radio frequency interference impacts from operation of two transmission lines; (4) potential release of toxic and hazardous materials during construction and maintenance of two transmission lines; (5) electric and magnetic field impacts from operation of two transmission lines; (6) impacts to groundwater sources and springs resulting from 15' x 15' x 16' deep excavations for the construction of support structures for two transmission lines, and attendant impacts on availability of water for irrigation, livestock or wildlife. As the enclosed videotape shows, noise impacts experienced on the Kellogg Family Ranch from two transmission lines will be significant and deleterious. See Attachment 6.

Each of these potential impacts of the Reroute should be studied in a draft supplemental environmental impact statement. Until the impacts of the Reroute are fully studied and considered, selection of the Reroute alternative is precluded under NEPA.

9. Visual and Recreation Restorances Impacts of the Reroute Are Not Adequately Analyzed.

Analyses in the DEIS of potential visual and recreation resource impacts of the Reroute are deficient for many of the same reasons as the analysis of land use impacts. The Reroute is not mentioned in the discussion of view impacts at pages 3-71 through 3-74 of the DEIS, or the discussion of recreation resource impacts at pages 3-90 through 3-91. Neither the description of Segment A on pages 3-73 through 3-74, nor Map 10 (visual analysis) includes any indication of the Reroute. There are no photographs or other visual analysis of properties along the Reroute. In fact, page 4-89 of the DEIS concludes that "the proposed structures would not dominate or become the focal feature because they would be located parallel to an existing transmission line that already impacts views." This is not the case for the Reroute.

The DEIS eventually reveals on page 4-90 that the Reroute will be in a Visually Sensitive Area and that the transmission line structures would be closer than what is shown on Photo 4-8-2 (page 4-89 of the DEIS). There is no photo included in the DEIS to show the actual impact on the Colockum Pass Visually Sensitive Area.⁸ Moreover, the DEIS's discussion of impact only mentions moving the new transmission line to the Reroute area. It entirely omits the fact that two

⁸ There is no explanation in the DEIS as to why Colockum Pass is more visually sensitive than Cooke Canyon and Coleman Canyons.

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transmission lines are proposed in the Reroute alternative, because the original line will also be reconstructed along the Reroute. The analysis in the DEIS in this regard is thus misleading, as well as incomplete.

The DEIS also notes that a "high" impact to visual resources results when the transmission lines would become a view's dominant feature or focal point. As shown in the enclosed attachments 21 through 35, the construction of two transmission lines along the Reroute relocates the transmission lines from the background of views enjoyed from the Kellogg Family Ranch, where they are currently dwarfed by the surrounding hills, to new much closer positions that dominate views of the surrounding hills including Coleman Canyon, Cooke Canyon and Colockum Pass. As the photographs included with this comment letter illustrate, the Reroute alternative will result in significant visual impacts to the Kellogg Family Ranch, which impacts are not discussed or analyzed at all in the DEIS. The existing bucolic scenes will be converted into a view dominated by cold steel transmission lines, forever altering the natural beauty of this property. The Kellogg family has been sensitive to the high value of the scenic views in this area, expending substantial resources to bury their own power lines to remove them from their views of the surrounding hills.

The general public traveling along Cooke Canyon Road, Coleman Road and Gauge Road also will have the transmission lines in their dominant view. But the DEIS includes no study or analysis of view impacts from these locations, and thus no opportunity for the general public to comment.

Unstudied visual impacts of the Reroute will also affect the recreational qualities of the Kellogg Family Ranch. Without any supporting analysis, the DEIS concludes at page 4-97 that "The reroute in Segment A would not increase the level of impact to recreational activities." Of course, had the BPA consulted with the Mr. Kellogg as is required under NEPA, it would have discovered the significant value the Kellogg Family Ranch holds as a potential future natural preservation tract, and the recreational activities currently enjoyed by Mr. Kellogg, his family and friends, some of which are shown in the enclosed photographs. See Attachments 32-35. The construction of two transmission lines over approximately 6 of a mile of the Kellogg Family Ranch threatens to impact native vegetation, wildlife and fish, alter natural stream and groundwater flows, create constant noise and visual blight and dominate the visual scene from many areas of the property. All of these impacts would not be felt to the same degree with construction of only the single new line along the shorter original Segment A route.

Studies of the visual and recreational impacts that will likely result on the properties over which the Reroute is planned should be completed in a draft supplemental environmental impact statement. The general, conclusory and incomplete statements regarding these impacts in the DEIS do not constitute a "hard look," as required under NEPA.

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10. Cultural Resources Impacts of the Reroute Are Not Adequately Analyzed.
Potential impacts on cultural resources resulting from the Reroute are largely ignored and/or minimized in the DEIS. Map 11 purports to show cultural areas along the entire project, but fails to indicate the location of the Reroute. Table 4.10-1, Summary of Sensitive Areas by Alternative on page 4-103 of the DEIS, apparently does not include the Reroute.

Appendix H to the DEIS is a 30-page Phase I Cultural Resources Assessment (Revision 3, dated January 2002). Although page 15 of this report cautions that "Impacts and appropriate mitigation measures vary with the specifics of individual resources, [and] consideration of alternatives must include consideration of site-specific impacts," this report concludes *without any site-specific study of the Kellogg Family Ranch* that "The proposed realignment of a portion of Segment A in the vicinity of Coleman Creek Road will not affect any recorded cultural resources not already accounted for in Table A1." As with other impact discussions in the DEIS and supporting appendices, there is no mention of the fact that a wider right-of-way will be required for two transmission lines along the Reroute, or the significant disturbances to the original route that will likely occur during removal of the original transmission line.

In a separate comment letter dated March 16, 2002, Professor Morris L. Uebelacker opines that the impacts to cultural resources as a result of the Reroute alternative are greater and more extensive than indicated in the DEIS. See Attachment 18. Professor Uebelacker advises "intensive field and archival research" along the Reroute area because the area "crosses through distributions of historic artifacts associated with early agricultural settlement of the valley." *Id.* He further states that it is "extremely likely that buried archaeological places exist in the proposed reroute and substantial surface and sub-surface evaluations will be required." *Id.*

Potential impacts to cultural resources should not be lightly dismissed. Even the DEIS and Appendix H note the fact that ground disturbing activity within boundaries of significant cultural resources is destructive, resulting in permanent, irreversible damage. Clearing vegetation, even without ground disturbance, affects most types of traditional cultural properties ("TCP"). BPA has not performed any site-specific studies along the Reroute and the DEIS does not contain a full and fair discussion of significant environmental impacts to inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Full consideration of potential cultural resource impacts of the Reroute proposal should be included in a draft supplemental environmental impact statement.

D. Conclusion.

The efforts of Cooke Coleman LLC and Gaylord Kellogg to take steps to restore portions of the Kellogg Family Ranch to its native state are seriously threatened by the BPA's inclusion of the

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Reroute as an unexamined alternative in the DEIS. BPA has failed to comply with NEPA public participation requirements, significantly limiting the ability for interested persons — here, the owner of the property over which two proposed transmission lines would run — to provide meaningful comment on the Proposal. The DEIS itself includes inaccurate, incomplete and misleading information. Impacts resulting from the Reroute have been either ignored or summarily assumed to be the same as impacts resulting from construction of a single new line along the original route for Segment A.

Construction of both the new and existing lines along a circuitous route which collectively for both power lines is nearly .29 of a mile longer than the original straight route will likely result in impacts to various elements of the affected environment to a different degree and in a different manner than the originally planned construction of only one line next to the existing transmission line. Impacts to these elements of the environment will also likely result from the removal of the existing transmission line. These impacts have not been adequately studied or analyzed in the DEIS. A supplemental draft environmental impact statement should be prepared to evidence a full consideration of the potential impacts of the Reroute alternative, as mandated by NEPA.

Thank you for your consideration of these comments. Please contact us if you have any questions.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC

/s/ Stephanie M. Hicks

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Enclosures

cc: Clients
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Carol Borgstrom, Director, Office of NEPA Oversight
Environmental Protection Agency, Attention Office of Federal Activities
John Iani, Regional Administrator, Environmental Protection Agency, Region 10

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